

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00073  
**Petitioners:** John J. & Becky B. Zabrecky  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007263502260021  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in December 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$164,400 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 21, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

### Facts

5. The subject property is located at: 1529 Warwick Avenue, Whiting, in North Township.
6. The subject property is a 1¾ story brick and frame single family dwelling with a detached garage. The subject is located on a platted lot, 40 feet by 120 feet.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of subject property as determined by the DLGF:  
Land: \$15,900 Improvements: \$148,500 Total: \$164,400.
9. Assessed Value requested by Petitioners:  
Land: \$15,900 Improvements: \$120,000 Total: \$135,900.
10. The following persons were present and sworn in at the hearing:  
For Petitioners: John J. Zabrecky, Owner  
Margaret Abildua, Witness  
Matthew Zabrecky, Witness  
  
For Respondent: David M. Depp, Senior Appraiser, Cole-Layer-Trumble

## Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a. Petitioners contends that there were errors in the square footage of the subject property, the amount of basement area compared to the amount of crawl space, the story height and areas of the dwelling that were being assessed as brick structure when in fact it is frame.
  - b. Petitioners contend that it was agreed to at the informal hearing that these items were in error but the Notice of Final Assessment did not have a value change. *Notice of Final Assessment as Attachment to Form 139L.*
  - c. The value of the dwelling was changed on the property record card obtained from the Township Assessor after the informal hearing but the assessed value did not change. Neither the Township Assessor nor the County Assessor could explain why the current property record card shows two different land values and two different improvement values. *Petitioners' Exhibit 2, page 3; Respondent's Exhibit 2.*
  - d. The Petitioners' tax bill reflects the total assessed value of \$164,400, which is made up of \$15,900 land value and \$148,500 for the improvements. *Petitioners' Exhibit 5.*
  - e. An appraiser quoted a 1999 value of his property of \$120,000, but he did not have an appraisal prepared. *Zabrecky testimony.*
  - f. Petitioner contends that his dwelling is assessed using an effective year built while others in his neighborhood who have also added on to their dwellings are not being assessed using an effective year built. *Zabrecky testimony.*
  
12. Summary of Respondent's contentions in support of the assessment:
  - a. All of the square footage errors addressed at the informal hearing have been corrected on the property record card, indicating a final dwelling value of \$139,600 after all depreciation and neighborhood factors are accounted for. Adding an additional \$7,800 for the detached garage results in a total improvement value of \$147,400. *Depp testimony.*
  - b. Past assessing officials appear to have computed an effective year built based on construction added after the original structure was built in 1940. Their calculations of record show an effective year of 1964. This was not changed for the current assessment. *Depp testimony.*
  - c. The neighborhood reassignment done in April 2004 changed the land base rate, resulting in the \$18,600 land value shown on one area of the property record card, and also changed the neighborhood factor that is applied to the improvements on the property record card. Respondent is unaware of the reason why a Notice of Departmental Correction was not done. *Depp testimony.*

## Record

13. The official record for this matter is made up of the following:
  - a. The Petition and all subsequent pre-hearing submissions by either party.
  - b. The tape recording of the hearing labeled Lake County tape #204.

- c. Exhibits:
- Petitioners' Exhibit 1: Form 139L.
  - Petitioners' Exhibit 2: Subject property record cards from 1996, 2003 and 2004.
  - Petitioners' Exhibit 3: Photographs of subject property.
  - Petitioners' Exhibit 4: Comparable property record cards, photographs and assessments of same.
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- Respondent Exhibit 1: Form 139L.
  - Respondent Exhibit 2: Subject property record card and photograph.
  - Respondent Exhibit 3: Comparable sales analysis, with property record cards and photographs.
  - Respondent Exhibit 4: Property record card and photograph of comparable submitted by Petitioners.
- d. These Findings and Conclusions.

### Analysis

14. The most applicable governing law is:
- a. The Petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998)
  - b. Essentially, the Petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks is correct. In addition to demonstrating that the assessment is invalid, the Petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF*, 765 N.E.2d 711 (Ind. Tax, 2002).
  - c. The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. Conclusory statements are of no value to the State in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
  - d. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
  - e. Effective Age – The age of a structure as compared to other structures performing like functions. Sometimes it can also be thought of as the actual age less the years that have been removed from the actual age by such things as maintenance, repair, upgrading, and change. Effective age can also be decreased by the removal of some kind of functional inadequacy or the modernization of one or more of the systems... Effective age may also be changed in a residential structure when remodeling takes place and the structure is updated, renovated, or when additional area is added which

increases the structures functional utility. *Version A - Real Property Assessment Guideline, Appendix B, pages 5 - 6.*

15. The Petitioners did not provide sufficient evidence to support the Petitioners' contention that the assessment of the improvements is incorrect. The Petitioners did establish the land was improperly assessed. Each of the Petitioners' contentions will be addressed separately:

#### Story Height

16. The Respondent agreed the building is a 1¾-story structure. The assessed value of the structure accurately reflects the value for a 1¾-story structure. *Depp testimony.* Due to limitations in the assessor's computer program (different size additions were added at different times), the property record card indicates a 2½-story structure. However, this computer error does not impact the assessed value of the property.

#### Effective Year of Construction

17. Petitioners contend that their dwelling is assessed using an effective year built while others in his neighborhood who have also added on to their dwellings are not being assessed using an effective year built. *Zabrecky testimony.*
18. The comparable properties submitted by the Petitioners include two properties that clearly have additions and were assessed using an effective age rather than a chronological age. Of the other comparables, some definitely do not have additions while the records and photographs of the others are not clear enough to make a determination. The Petitioners failed to demonstrate the additions and effective years of the purported comparable properties are similar to the property under appeal.
19. The parties agreed that additions to the Petitioners' property were made after the original construction date. As indicated, effective age may be changed in a residential structure when remodeling takes place and the structure is updated, renovated, or when additional area is added which increases the structures functional utility. *Version A - Real Property Assessment Guideline, Appendix B, page 6.*
20. The Petitioners failed to present any calculation reflecting these additions to establish the effective year of construction should be other than 1964, as reflected in the current assessment.

#### Grade

21. The Petitioners contended the grade should be C-1. It is currently assessed as grade C.
22. In support of their position, the Petitioners presented property record cards, and photographs of eight purported comparable properties. The grade factor assigned to most of the comparables is C-1 (95%), with one at C+1 (105%). No other evidence was presented to support a change in grade factor.

23. The Petitioners, however, failed to establish that these properties are comparable to the residence under appeal. No discussion of similar features and amenities were presented. For example, some of the alleged comparable properties are actually apartment rental units.
24. The Petitioners have not established that the grade factor is incorrect.

#### Land

25. The Petitioners contend they did not learn of an increase in the land assessment under the Board's administrative hearing. Both the Notice of Final Assessment and the Reconciliation Tax Bill support this position. *Petitioners' Exhibits 1 and 5.*
26. The Respondent indicated it was unaware as to whether any notice of a departmental correction was issued after a neighborhood number "correction" by the DLGF took place sometime in April 2004. *Depp Testimony.*
27. The Petitioners have made an un rebutted prima facie case that they were denied due process because they were not advised of the change in the land valuation. Accordingly, as a result of this procedural error, the land value should remain at the original assessed value of \$15,900.

#### Conclusion

28. The Petitioners did not make a prima facie case for a reduction in assessed value in the improvements, \$147,400. Due to the fact that no notice of correction was issued, the Petitioners' land value should remain at \$15,900.

#### Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed as noted in the above conclusion.

ISSUED:

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

### - APPEAL RIGHTS -

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**